

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICHARD KATZMAN,) Case No.: 13-CV-00438-LHK
Plaintiff,)
v.) ORDER COMPELLING DOCUMENT
LOS ANGELES COUNTY METROPOLITAN) PRODUCTION AND SUBSEQUENT
TRANSPORTATION AUTHORITY, a special) FILINGS
district,)
Defendant.)

Trial in this matter will resume on Friday, January 16, 2015, at 9 a.m. Based on Plaintiff's Motion for Sanctions and Motion to Strike Testimony and Evidence Based on Discovery Violations, ECF No. 123; the Declaration of Calvin House in Response to Orders of January 8, 2015, ECF No. 131; the transcript of Janice Olsen's trial testimony, ECF No. 130; the Parties' Stipulation Regarding the Testimony of Janice Olsen, ECF No. 135; Plaintiff's Supplementary Statement in Support of Motion for Sanctions and Motion to Strike, ECF No. 136; and today's hearing, the Court ruled as follows:

Defendant's Supplemental Document Production

Defendant shall interview and collect documents from any custodians of documents responsive to Plaintiff's previously-served discovery requests. Such custodians shall include, at minimum, but not be limited to the following:

MTA Employees
Yvette Nixon
Theresa Cortez
Brenda Bozeman
Rudy Chairez
Beth Geary
Jodi Stewart
Angelina Farias-Sanchez

1 Kashawn Marimer
2 Donna Mills
3 Terry Matsumoto

4 Pension Committee Members for the Non-Contract and AFSCME Pensions

5 Pension Plan Trustees for the Non-Contract Pensions
6 Donna Mills
7 Terry Matsumoto
8 Nalini Ahuja
9 Don Ott
10 Richard Hunt

11 Pension Plan Trustees for the AFSCME Pensions

12 Ernest Waters
Richard Franden
John Hale

13 Mail Services Personnel who mailed MTA's Audit Forms

14 **Defendant must immediately instruct all custodians to preserve potentially responsive
15 documents.**

16 Documents to be produced shall include, at a minimum, but not be limited to:
17 All documents regarding Defendant's pension audit procedures
All documents regarding Defendant's 2009, 2011, and 2013 pension audits
All documents regarding when and whether audit forms were mailed to pension beneficiaries
All documents regarding communications with pension beneficiaries about the audit
Janice Olsen's file of audit notes and documents
All handwritten notes, correspondence, personal files, and emails regarding the above.

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19 Defendant shall produce responsive documents on a rolling basis daily beginning on
January 9, 2015. Defendant shall complete its document collection by Wednesday, January 14,
2015, and complete its production by Thursday, January 15, 2015 at 10 a.m. To keep the Court
apprised of Defendant's document production, Defendant shall file its production letters with the
Court daily.

20 **Exhibit Lists**

21 On a daily basis at 4 p.m. beginning on Monday, January 12, 2015, Plaintiff shall file a
revised exhibit list identifying new exhibits Plaintiff intends to introduce at trial. Defendant shall
file any objections to new exhibits on Plaintiff's revised exhibit list by 6 p.m. the same day.
Plaintiff shall file any response to Defendant's objections by noon the following day.

22 **Jury Instructions**

23 By Tuesday, January 13, 2015 at 3 p.m., the parties shall file a joint proposed jury
instruction regarding Defendant's failure to produce responsive documents. If the parties cannot
agree on all elements of a jury instruction, the parties shall identify which elements are in dispute
and why each party's proposal is superior. The Court will file a proposed jury instruction by
Wednesday, January 14, 2015 at 5 p.m. The parties shall file any objections to the Court's
proposed instruction by Thursday, January 15, 2015 at noon.

1 **Plaintiff's Motion for Sanctions**

2 The Court will not entertain a motion for sanctions related to Defendant's failure to produce
3 responsive documents until after the jury returns a verdict. Before any motion for sanctions is filed,
the parties shall meet-and-confer to attempt to resolve the matter.

4 **Potential Spoliation of Documents**

5 According to the proof of service of Plaintiff's complaint, Plaintiff served his complaint on
6 Defendant on March 12, 2013, at 4 p.m., ECF No. 17. If Plaintiff intends to seek a jury instruction
7 regarding spoliation, Plaintiff shall file a supplemental brief regarding when the obligation to
preserve documents arose and whether any employees of Defendant, including Janice Olsen,
destroyed relevant evidence after the obligation to preserve such evidence arose. **Plaintiff shall file
this brief by Tuesday, January 13, 2015 at noon. Defendant shall file an opposition, if
necessary, by Tuesday, January 13, 2015 at 6 p.m. Plaintiff may file a response, if necessary,
by Wednesday, January 14, 2015 at 10 a.m.**

10 **Notice of Appearance**

11 Lee Hepner shall file a notice of appearance in this matter by the end of the day, Friday,
January 9, 2015.

12 **IT IS SO ORDERED.**

13 Dated: January 9, 2015


LUCY H. KOH
United States District Judge